Supreme Court, U.S.
FILED
FEB 1 1986
JOSEPH F. SPANIOL, JR.
CLERK

85-1303
No._____

IN THE

Supreme Court of the United States

OCTOBER TERM 1985

IN RE GUARDIANSHIP OF
SHARON KOWALSKI, WARD

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

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224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

QUESTIONS PRESENTED

1. Does a handicapped person have a right to be represented by counsel of her choice in judicial proceedings in which determinations will be made as to her legal capacity and her rights of privacy and free association, where she has retained that counsel herself?

2. May state courts deny a handicapped person the right to be represented by retained counsel of choice, without conducting an evidentiary hearing as to facts surrounding retention of counsel?

LIST OF PARTIES

The parties to the proceeding below include Sharon Kowalski, Donald Kowalski, and Karen Thompson.

TABLE OF CONTENTS

	Page
Questions Presented	i
List Of Parties	i
Table Of Authorities	iv
Opinions Below	1
Jurisdiction	1
Constitutional Provision Involved	2
Statement Of The Case And The Facts	2
A. Background Information	2
B. Sharon's Retention Of Her Own Counsel	3
C. The Denial Of Sharon's Constitutional Right To Be Represented By Her Counsel Of Choice	5
Reasons For Granting The Writ	8
The Decisions Of The Minnesota Appellate Courts Violate Sharon Kowalski's Due Process Rights By Preventing Her From Being Represented By Her Self-Retained Counsel Of Choice	8
A. The Court Has Held That The Handicapped Possess Substantial Due Process Rights	9
B. The Court Has Held That Even Those Accused Of A Crime Have A Right To Be Represented By Their Counsel Of Choice	10
C. This Case Presents An Important Unresolved Question Of Constitutional Law	11
Conclusion	13

TABLE OF AUTHORITIES

Cases:	Page
Addington v. Texas, 441 U.S. 418 (1979)	9
Argersinger v. Hamlin, 407 U.S. 25 (1972)	8
Chandler v. Fretag, 348 U.S. 3 (1954)	10
Faretta v. California, 422 U.S. 806 (1975)	8, 10, 13
In re Gault, 387 U.S. 1 (1967)	8
In re Schulte's Guardianship, 231 Iowa 237, 1 N.W.2d 193 (1941)	7
Lyon v. Freshour's Estate, 174 Mich. 114, 140 N.W. 517 (1913)	7
Minnesota ex rel. Pearson v. Probate Court, 309 U.S. 270 (1940)	9
Parham v. J.R., 442 U.S. 584 (1979)	9
Powell v. Alabama, 287 U.S. 45 (1932)	11
Specht v. Patterson, 386 U.S. 605 (1967)	8
Vitek v. Jones, 445 U.S. 480 (1980)	8, 9
Youngberg v. Romeo, 457 U.S. 307 (1982)	9, 11
Statutes and Other Authorities:	
U.S. Const. amend. XIV (1868)	22
28 U.S.C. § 1257(3)	1
Minn. Stat. §§ 525.55, *et seq.* (1982)	5, 7

APPENDIX INDEX

	Page
Order of the Minnesota Supreme Court dated November 4, 1985	A-2
Order of the Minnesota Supreme Court dated November 25, 1985	A-2
Order of the Minnesota Court of Appeals dated September 13, 1985	A-3
Order of the Probate Court of Sherburne County, Minnesota, dated April 25, 1984	A-6
Order of the Probate Court of Sherburne County, Minnesota, dated July 22, 1985	A-11
Affidavit of Janlori Goldman dated August 5, 1985	A-17
Affidavit of Amy B. Bromberg dated August 4, 1985	A-20

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OCTOBER TERM 1985

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IN RE GUARDIANSHIP OF
SHARON KOWALSKI, WARD

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

Sharon Kowalski asks that a writ of certiorari issue to review the judgments of the Supreme Court of Minnesota and the Minnesota Court of Appeals.

OPINIONS BELOW

Applicable portions of the orders of the Supreme Court of Minnesota (A-1), the Minnesota Court of Appeals (A-4), and the Probate Court for Sherburne County, State of Minnesota (A-12), are unpublished and appear in the appendix.

JURISDICTION

The order of the Supreme Court of Minnesota was entered on November 4, 1985. A timely petition for rehearing was denied on November 25, 1985, and this petition for certiorari was filed within 90 days of both dates. This Court has jurisdiction under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Due Process Clause of the Fourteenth Amendment to the United States Constitution:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; . . .

STATEMENT OF THE CASE AND THE FACTS

A. Background Information.

Sharon Kowalski is twenty-nine years old. On November 13, 1983, she was injured in an automobile accident, and her physical and mental abilities were impaired. Sharon is now confined to a wheelchair and cannot vocalize her thoughts. She communicates by typing on an electric typewriter, by using hand signals, and by pointing to written words. Sharon currently resides at the Leisure Hills nursing home in Hibbing, Minnesota.

Shortly after the accident, Sharon became the subject of a heated legal battle concerning the terms of her conservatorship, residency, treatment, and accessibility of visitors. The parties to that dispute are Sharon's parents, Donald and Della Kowalski, and her friend and housemate, Karen Thompson, with whom Sharon had lived for approximately four years prior to the accident. The legal dispute began when Ms. Thompson filed a petition to be appointed Sharon's guardian and Mr. Kowalski cross-petitioned to be appointed guardian. Because of a need for counsel in these guardianship proceedings, the Sherburne County probate court appointed Thomas D. Hayes, Esq. of rural Monticello, Minnesota, as her counsel.

In its initial order, the probate court found that both Donald Kowalski and Karen Thompson had significant relationships

with Sharon. (A-9) The court also found that Ms. Thompson and Mr. Kowalski were both equally qualified to be appointed guardian for Sharon, but appointed Mr. Kowalski guardian in light of Ms. Thompson's agreement to his appointment. (A-9-10) The probate court also imposed several significant limitations and restrictions on Mr. Kowalski's power. (A-10) Ms. Thompson was granted equal access to Sharon's medical and financial information, equal rights to consult with Sharon's physicians, and equal rights to visit Sharon. Mr. Kowalski also did not have the right to determine who Sharon could visit or where she should reside. (A-10-11)

Despite the probate court's action, Mr. Kowalski brought numerous motions to restrict Ms. Thompson's involvement in Sharon's care and to terminate any contact between Ms. Thompson and Sharon. In response, Ms. Thompson sought to have Mr. Kowalski removed as guardian. These various motions were, for the most part, denied and the original order remained in place. Mr. Hayes continued to represent Sharon in what had evolved into major litigation.

B. Sharon's Retention Of Her Own Counsel.

The facts giving rise to Sharon's retention of her own counsel follow:

On May 30, 1985, Janlori Goldman, Legal Counsel and Assistant Director of the Minnesota Civil Liberties Union (the "MCLU"), visited Sharon at the Park Point Manor Nursing Home ("Park Point") in Duluth, Minnesota. (A-18) Ms. Goldman communicated with Sharon by orally asking her questions. Sharon responded by typing answers on an electric typewriter. (A-19)

During that visit, Ms. Goldman explained the nature and purpose of the MCLU to Sharon. Sharon indicated she under-

stood. (*Id.*) Ms. Goldman then asked Sharon if she believed her wishes were being made known to the probate court. Sharon typed "No". (*Id.*) Finally, Ms. Goldman asked Sharon if she wanted Ms. Goldman to represent her in order to make Sharon's wishes known to the probate court. Sharon typed "Yes". (*Id.*)

On June 12, 1985, Ms. Goldman again visited Sharon at Park Point. Also present during this visit, among others, was an attorney from the law firm of Faegre & Benson, Amy Bromberg, whom the MCLU had contacted to act as a volunteer attorney in this matter. Ms. Bromberg communicated with Sharon by orally asking her questions and Sharon responded by typing answers on an electric typewriter. (A-22) During this visit, Ms. Bromberg asked Sharon what her wishes were regarding representation in the probate court proceedings. Sharon again indicated she did not believe her wishes were being made known to the probate court. Sharon again indicated she wished to have the MCLU by Ms. Bromberg represent her in those proceedings. (*Id.*)

Based upon Sharon's requests, on June 20, 1985, a Notice of Appearance was served and filed in the probate court entering the appearance of the MCLU by Faegre & Benson as counsel on behalf of Sharon. (A-27)

Ms. Bromberg visited Sharon a second time on June 24, 1985. Sharon reaffirmed her retention of Ms. Bromberg and the MCLU during that visit. (A-23)

On June 25, 1985, Mr. Kowalski's attorney wrote the probate court: "I also wish to state to the Court that I received a copy of notice of appearance by Amy Bromberg and Brian B. O'Neill, attorneys representing the Minnesota Civil Liberties Union. I did have a conversation after receiving this notice with Ms. Bromberg, and told her I welcomed her entry into this case, . . ." (A-31)

C. The Denial Of Sharon's Constitutional Right To Be Represented By Her Counsel Of Choice.

On July 22, 1985, the probate court issued a second order that, among other things, declared Sharon an incapacitated person, removed the safeguards in the earlier order that had protected Sharon's freedom to associate with visitors of her choice, and granted Mr. Kowalski the power to determine who could visit Sharon. (A-12) The probate court's findings included boilerplate determinations that Sharon lacked the ability to make responsible decisions, was unable to manage her estate, and was incapable of consenting "to necessary medical or other professional care, counseling, or treatment." (A-14) *See* Minn. Stat. § 525.56. The probate court did *not* make a determination that Sharon was incapable of independently retaining counsel.

Shortly thereafter, Mr. Kowalski moved Sharon to another care facility and terminated all contact between Sharon, Ms. Thompson, and Faegre & Benson. (A-24-25) Despite subsequent requests, Mr. Kowalski has refused to allow Sharon's attorneys of choice to visit her. (A-26)

On August 7, 1985, a Notice of Appeal from the probate court's second order was filed by Sharon's personal attorneys, the MCLU by Faegre & Benson. On August 22, 1985, a second and joint Notice of Appeal was filed by Sharon's personal attorneys and her court-appointed attorney, Mr. Hayes. Both appeals sought review of the probate court order insofar as it declared Sharon totally incapacitated, appointed Donald Kowalski her guardian, and deprived Sharon of the power to determine with whom she may visit.

Sharon now had both court-appointed counsel and her personal attorneys aiding in her defense. Nevertheless, the guardian moved to dismiss the appeals as having been brought by

counsel "without standing" to represent Sharon. Sharon responded with affidavits setting forth the facts surrounding retention. (A-18, 21) Mr. Hayes, Sharon's court-appointed attorney, opposed the guardian's efforts to disqualify Sharon's chosen counsel. The only record proof concerning retention were the affidavits submitted in Sharon's behalf.

On September 13, 1985, the Minnesota Court of Appeals, *inter alia*, rejected Sharon's retention of her personal attorneys by dismissing the first appeal. The Minnesota Court of Appeals did so without record support: "It *appears* that the trial court has determined the ward is incapable of independently retaining counsel, . . ." (A-5) (emphasis added)

The Minnesota Court of Appeals also rejected her court-appointed attorney's decision to associate with counsel specialized in the legal issues raised in the second appeal: Sharon's constitutional rights. (A-6) "[C]ourt appointed counsel had *apparently* not been authorized to associate with the MCLU attorneys; . . ." (A-5) (emphasis added)

Petitions for review and for extraordinary relief were timely filed with the Supreme Court of Minnesota. Mr. Hayes, who practices in a small town with two partners, informed the Minnesota Supreme Court that "cognizant of the resources necessary to conduct complicated constitutional litigation, and cognizant of the fact that few attorneys are afforded the luxury of developing a specialty in constitutional litigation, [he had] chose[n] to associate with the MCLU and Faegre & Benson."

The Minnesota Supreme Court summarily denied all petitions on November 4, 1985. (A-3) A timely petition for rehearing was filed on November 7, 1985, which was also summarily denied on November 25, 1985. (A-3-4)

The orders of the Minnesota appeals courts violated Sharon's federal constitutional rights, as well as state law. Pursuant to the probate court order and Minnesota Statute § 525.56, subd. 3(5), Sharon has the power to approve of "contracts for necessities." (A-8) Legal services have long been considered necessities. *See, e.g., In re Schulte's Guardianship*, 231 Iowa 237, 1 N.W.2d 193 (1941); *Lyon v. Freshour's Estate*, 174 Mich. 114, 140 N.W. 517 (1913). Furthermore, Minnesota Statute § 525.56, subd. 3(6), recognizes that supervisory power over a ward in a manner that limits civil rights and restricts personal freedom can be exercised "only to the extent necessary to provide needed care and services." Lastly, Sharon's right to select counsel *of her own choosing* is reflected in Minnesota Statutes § 525.55, subd. 2 (dealing with the right to counsel in initial commitment proceedings); and Minnesota Statute § 525.58, subd. 2 (dealing with the right to counsel for petitions for restoration of capacity).

The Minnesota appellate proceedings concerning Sharon's capacity and her rights of association continue to date. Because of the continuing jurisdiction of a probate court, Sharon may be subject to the control of that court for some years. As a result of the Minnesota appellate decisions, Sharon has been denied her right to choose counsel, a right particularly important to her in the continuing legal confrontations over both her capacity and her care.

The uncontested record before the Minnesota appeals courts was that Sharon was dissatisfied with her court-appointed representation in the ongoing litigation with her guardian. Sharon retained her own counsel on three separate occasions because she was of the view that her wishes were not being made known to the probate court. In addition, her court-appointed counsel desired the aid and assistance of the MCLU by Faegre & Benson.

REASONS FOR GRANTING THE WRIT

THE DECISIONS OF THE MINNESOTA APPELLATE COURTS VIOLATE SHARON KOWALSKI'S DUE PROCESS RIGHTS BY PREVENTING HER FROM BEING REPRESENTED BY HER SELF-RETAINED COUNSEL OF CHOICE

The Minnesota appeals courts' position was: A person adjudged incapacitated is prohibited from retaining her own counsel to argue about the fact of capacity, the scope of capacity, or the scope of confinement resulting from the adjudication of incapacity.

This Court's opinions on the right to counsel have rarely addressed the question of a person's right to be represented by counsel of choice, when retained by the individual. The great conflicts of the last few decades have dealt primarily with court-appointed counsel. *See, e.g., Vitek v. Jones,* 445 U.S. 480, 492, 495, 496 (1980); *Argersinger v. Hamlin,* 407 U.S. 25, 31, 32 (1972); *In re Gault,* 387 U.S. 1, 35, 41 (1967); *Specht v. Patterson,* 386 U.S. 605, 610 (1967). There is an obvious reason for this focus: the absolute right of an individual to speak through counsel *that the individual retains* has been with us since the Revolution. *See Faretta v. California,* 422 U.S. 806, 833 (1975). That right has rarely been challenged.

The decisions of the Minnesota appellate courts, however, not only challenge that right, but effectively deny Sharon her constitutional due process right to be represented by her self-retained counsel of choice. There is no decision of this Court in which this issue is addressed. However, analogous decisions of this Court make clear that the actions of the Minnesota appellate courts cannot be allowed to stand.

A. The Court Has Held That The Handicapped Possess Substantial Due Process Rights.

The Court has repeatedly held that those subject to commitment proceedings and the ensuing commitment have substantial due process rights, including a right to counsel. *E.g.*, *Parham v. J.R.*, 442 U.S. 584, 627 (1979); *Addington v. Texas*, 441 U.S. 418, 425 (1979). The Court also has recently made it clear that the mentally handicapped have a right to rehabilitation. *Youngberg v. Romeo*, 457 U.S. 307, 315-316, 317, 318, 321-322 (1982). Usually, the issue is what process is due. *Id.*

In the first modern case dealing with the due process rights of the handicapped, the Court concluded:

> We fully recognize the danger of a deprivation of due process in proceedings dealing with persons charged with insanity or, as here, with a psychopathic personality as defined in the statute, and the special importance of maintaining the basic interests of liberty in a class of cases where the law though "fair on its face and impartial in appearance" may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings.

Minnesota ex rel. Pearson v. Probate Court, 309 U.S. 270, 276-277 (1940); *see Vitek v. Jones*, 445 U.S. at 492.

The decisions of the Minnesota appellate courts, however, ignore this caution by denying Sharon's right to be represented by her counsel of choice. What fairness can there be in a proceeding where a handicapped individual is not allowed to have her positions argued by the champion she has selected and hired?

B. The Court Has Held That Even Those Accused Of A Crime Have A Right To Be Represented By Their Counsel Of Choice.

In *Faretta v. California*, 422 U.S. 806 (1975), the Court affirmed the right of an accused to be represented by his counsel of choice. In that case, the accused requested that he be permitted to represent himself at trial. *Id.* at 807. The Court refused to sanction the trial court's attempt to compel the accused to be represented by a public defender. *Id.* at 810. In so ruling the Court noted that "[t]he value of state-appointed counsel was not unappreciated by the Founders, yet the notion of compulsory counsel was utterly foreign to them." *Id.* at 833 (footnote omitted); *see Chandler v. Fretag*, 348 U.S. 3 (1954) (denial to accused felon of opportunity to obtain counsel of choice violates due process clause of fourteenth amendment; the right to be heard through one's own counsel is unqualified). Unwanted counsel is no counsel at all. 422 U.S. at 820-821, 834.

Faretta and *Chandler* stand for a basic legal proposition:

> What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel *when desired and provided by the party asserting the right.*
>
> * * *
>
> If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. *If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.*

Powell v. Alabama, 287 U.S. 45, 53, 68-69 (1932) (emphasis added). The handicapped have a need for protection greater than those accused of crimes. Subjected to legal proceedings not dissimilar from criminal proceedings, they are often voiceless. In addition, the impaired are disenfranchised through no fault of their own. The impaired ought to have rights greater than those accused of crimes. *Youngberg v. Romeo*, 457 U.S. at 315-316, 321-322.

C. This Case Presents An Important Unresolved Question Of Constitutional Law.

As previously mentioned, the Court has yet to address the question of whether the handicapped have a constitutional right to be represented by their self-retained counsel of choice. This case squarely presents that issue.

Sharon was interviewed on three separate occasions by a legal representative of the MCLU and the Minneapolis law firm of Faegre & Benson. Sharon, in response to questioning, indicated on each occasion she did not believe her wishes were being made known to the probate court and that she wanted assistance in the court proceedings. Each time Sharon indicated she wanted to retain the MCLU by Faegre & Benson as her attorneys. Counsel believed they had been retained and filed a notice of appearance in probate court. To this date, Sharon's court-appointed lawyer also believes Sharon retained the MCLU by Faegre & Benson.

The Minnesota Court of Appeals obviously disagrees: "It *appears* the trial court has determined the ward is incapable of independently retaining counsel . . . . [C]ourt appointed counsel had *apparently* not been authorized to associate with the MCLU attorneys." (A-5) (emphasis added) The Minnesota Supreme Court's summary denial of review added nothing to this analysis.

On the basis of these two "apparentlys", and without an evidentiary hearing, the appellate courts abrogated Sharon's right to be represented by counsel she had retained. The Minnesota appellate courts attacked counsel with a notable lack of process. No evidentiary hearing was held on the question of retention. There were no findings by the appellate courts on Sharon's ability to retain counsel. There was no record proof contrary to the fact of retention. And there was no recognition of the importance of counsel of choice in an adversarial system. The appellate courts presumed that Sharon had neither the capacity nor the right to retain counsel.

Sharon's right to counsel presents no issues concerning rights to government sponsored representation. Sharon retained volunteer counsel herself and at no expense to the state. Sharon's right to counsel presents no danger to the administration of commitment proceedings. A right to retain counsel results in the ability of an individual to challenge, in a meaningful fashion, the aspects of her very real confinement. The challenge takes place in the controlled environment of the court system, and is conducted in association with her court-appointed lawyer.

The dilemma this case presents is unusual. A superficial response to Sharon's retention of counsel is that she may lack the capacity to hire a lawyer. However, such a response ignores the fact that without the right to retain counsel, basic procedural and substantive rights are afforded in name only. By way of example, the right to a hearing rings hollow in the ears of one who does not believe court-appointed counsel is making her wishes known to the court.

The right of an individual to choose an attorney to represent her in court proceedings is a right upon which all other rights are based. The appearance of the personal attorney

springs from the fundamental right of the handicapped person, in a manner of gravity and consequence, to have access to all reasonable facilities for the prosecution of the competency inquiry.

By denying Sharon's right to be represented by her personal retained counsel, the Minnesota appellate courts have forced her to be represented by court-appointed counsel, a concept alien to the intent of the Founding Fathers. *See Faretta v. California*, 422 U.S. at 833. A handicapped individual should not have to rely on the benevolence of government in choosing counsel—the only way a handicapped individual can be guaranteed a fair champion is to have the right to select that champion.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decisions of the Supreme Court of Minnesota and the Minnesota Court of Appeals.

Dated: January 30, 1986.

Respectfully submitted,

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IN RE GUARDIANSHIP OF
SHARON KOWALSKI, WARD

APPENDIX TO PETITION FOR CERTIORARI

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STATE OF MINNESOTA
IN SUPREME COURT

C1-85-1502, C2-85-1590,
C1-85-1595 and C5-85-1664

IN RE GUARDIANSHIP OF:
SHARON KOWALSKI, WARD.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petitions for a writ of prohibition, writ of mandamus and for further review be, and the same are, denied.

Dated: 11-4-85.

By the Court:
DOUGLAS K. AMDAHL
Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT

C1-85-1502

IN RE: GUARDIANSHIP OF
SHARON KOWALSKI, WARD.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that Sharon Kowalski's motion for reconsideration of the denial of her petition for further review be, and the same is, denied.

Dated: November 25, 1985.

By the Court:
LAWRENCE R. YETKA
Associate Justice

STATE OF MINNESOTA
IN COURT OF APPEALS

No. C1-85-1502
No. C2-85-1590
No. C1-85-1595

IN RE: GUARDIANSHIP OF
SHARON KOWALSKI, WARD.

ORDER

Considered and decided by Popovich, Chief J., Wozniak, J. and Huspeni, Judge.

Based upon the file, records and proceedings herein, and because:

1. By order on July 23, 1985, the trial court gave the guardian the power to determine who may visit the ward, denied respondent Thompson's motion to remove the guardian, and took other action not germane to this order; and

2. Appeal C1-85-1502 was filed by volunteer attorneys for the Minnesota Civil Liberties Union (MCLU) on behalf of the ward on August 8; and

3. A second notice of appeal (C1-85-1595), signed by the ward's court-appointed counsel and the MCLU attorneys, was filed on August 22; and

4. Respondent Thompson also petitioned for discretionary review (C2-85-1590) of the July 23 order; and

5. The guardian moves to dismiss the ward's appeal as taken from a non-appealable order; and

6. An order refusing to remove a representative is appealable to this court, Minn. Stat. § 525.71(2) (1984); and

7. The July 23 order denied the motion of respondent Thompson to remove the guardian and it is appealable; and

8. The guardian also challenges the standing of MCLU attorneys to represent the ward; and

9. The trial court found the ward is incapable of consenting to medical or professional care or of approving any contract; and

10. MCLU attorneys were not appointed by the trial court to represent the ward and court-appointed counsel had apparently not been authorized to associate with the MCLU attorneys; and

11. It appears the trial court has determined the ward is incapable of independently retaining counsel, but participation of the MCLU as amicus curiae may be helpful to resolution of the appeal; and

12. Probate orders, judgments, and decrees are suspended pending appeal "until the appeal is determined or the court of appeals orders otherwise." Minn. Stat. § 525.714; and

13. The guardian moves this court to give the July 23 order effect pending appeal, despite the statutory language; and

14. The statute appears to have been intended to prevent distribution of financial assets pending appeal; and

15. While there is evidence to support the position of each party on this motion, the trial court found the on-going conflict between the ward's parents and respondent Thompson adversely affects the ward and "elimination of that conflict . . . is in the best interest of the ward *at the present time*"; and

16. The trial court was presented with virtually all the evidence presented to this court on this motion and concluded that elimination of the conflict was necessary; and

17. We defer to the determination of the trial court at this time, while not expressing any opinion on the merits of this appeal;

IT IS HEREBY ORDERED:

1. The guardian's motion to dismiss as taken from a non-appealable order is denied.

2. Appeal C1-85-1502 is dismissed as taken by counsel who lacked authority to represent the ward.

3. The petition for discretionary review (C2-85-1590) filed by Karen Thompson is denied. Thompson may assert her position on the July 23 order in appeal C1-85-1595 and may file a notice of review pursuant to Minn. R. Civ. App. P. 106, if appropriate.

4. Appeal C1-85-1595 will be treated as an appeal by the ward, represented by her court-appointed counsel.

5. The MCLU may file an amicus brief, not to exceed 20 pages, within 30 days after delivery of the transcript. *See* Minn. R. Civ. App. P. 132.01, subd. 3.

6. The July 23 order shall be given effect pending resolution of this appeal.

7. Briefing on the merits of this appeal will proceed in accordance with Minn. R. Civ. App. P. 131.01, after the transcript has been delivered.

Dated: 9-13-85

BY THE COURT
PETER S. POPOVICH
Chief Judge
D. D. WOZNIAK
Judge

STATE OF MINNESOTA
COUNTY OF SHERBURNE

IN DISTRICT COURT
PROBATE DIVISION

IN RE: THE GUARDIANSHIP OF:
SHARON KOWALSKI, WARD.

ORDER APPOINTING GENERAL GUARDIAN
OF THE PERSON AND ESTATE

This matter came duly on for hearing on April 25, 1984 on the petition of Karen Thompson seeking appointment of a guardian for Sharon Kowalski. Petitioner appeared personally and by and through her attorney, Elizabeth A. Ristvedt, Esq. The above named ward appeared through her attorney, Thomas D. Hayes, Esq. Donald and Della Kowalski appeared personally in opposition to the petition of Karen Thompson, and by and through their attorney, Kevin Spellacy. The Court having considered the evidence and being fully advised in the premises now makes the following:

FINDINGS OF FACT

1. The Ward was unable to attend the hearing by reason of medical condition as evidenced by a written statement from a licensed physician.

2. The Ward lacks sufficient understanding or capacity to make or communicate responsible decisions concerning her person.

3. The Ward has demonstrated behavioral deficits evidencing inability to meet her needs for medical care, nutrition, clothing, shelter, or safety.

4. The Ward lacks sufficient understanding or capacity to make or communicate responsible decisions concerning her estate or financial decisions.

5. The Ward has demonstrated behavioral deficits evidencing inability to manage her estate.

6. The Ward has property which will be dissipated without proper management and funds are needed for the care, support, and welfare of the Ward.

7. No appropriate alternative to guardianship exists which is less restrictive of civil rights and liberties, including any protective arrangement under M.S. 525.54, Subd. 7.

8. The Ward is incapable of exercising the following rights and powers:

a. To establish her place of abode.

b. To determine her food, clothing, shelter, health care, social and recreational requirements, and training, educational and rehabilitation requirements.

c. To dispose of her clothing, personal effects, vehicles, furniture or other property.

d. To consent to necessary medical or other professional care, counseling, treatment, or service.

e. To approve or withhold approval of any contract, except for necessities which the ward may make or wish to make.

f. To pay reasonable charges for the support, maintenance and education of the ward.

g. To pay any debts of the ward.

h. To possess and manage her estate, collect all debts and claims in her favor or compromise them, to invest all funds not needed for current debts and charges, and to represent herself in court proceedings or institute suit.

i. To vote.

9. The Ward is not a patient of a State Hospital for the mentally ill or a mentally retarded or dependent or neglected Ward of the Commissioner of Public Welfare, or under the temporary custody of the Commissioner of Public Welfare.

10. The Ward is in need of a guardian to supervise and to protect her person and estate.

11. The Court recognizes that Karen Thompson and Donald and Della Kowalski each have a significant relationship with the Ward, Sharon Kowalski, and finds each to be a suitable and qualified person to discharge the trust. However, in light of the difficulties existing between them the Court is unwilling to appoint joint guardians. Therefore, the Petitioner, Karen Thompson, agrees to the appointment of Donald Kowalski as guardian with no recognition that he is the most suitable and best qualified among those available and willing to discharge the trust, but is willing to accept the Court's appointment of Donald Kowalski under certain conditions and restrictions in order to avoid a contested hearing in the matter, which might not be in Sharon's best interest and in order to make every effort to resolve the difficulties existing between them.

CONCLUSIONS OF LAW

1. Sharon Kowalski is an incapacitated person.

2. A guardian of the person and estate of Sharon Kowalski should be appointed.

Now, Therefore, IT IS ORDERED:

1. That Donald Kowalski be and hereby is appointed guardian of the person and estate of Sharon Kowalski with all the powers enumerated in M.S. 525.56 Subds. 3 (and 4) with the following conditions and restrictions:

a. Sharon Kowalski will not be moved from the St. Cloud Hospital unless and until the medical personnel involved in Sharon's care and treatment deem it to be in Sharon's best interest. Sharon Kowalski can then only be moved to a location that is (1) approved by the medical personnel and deemed appropriate, and (2) approved by

the Court unless the Kowalskis and Thompson agree on the proposed location. If there is no agreement, the Court will then hear the matter of Sharon's relocation giving consideration to Sharon's best interest without giving the guardian's wishes any additional weight by virtue of his role as guardian.

b. Both Thompson and the Donald Kowalskis shall have equal access to the medical and financial information regarding the ward and shall have equal right to consult with medical and financial personnel.

c. Both Thompson and the Donald Kowalskis shall have equal access to the ward Sharon Kowalski. Visitation shall continue as scheduled previously by order of this court. The parties may modify said schedule upon agreement. If the parties are unable to agree, Dr. Steven Vincent, Psychologist at St. Cloud Hospital, shall attempt to mediate the question. If he is unable to mediate a satisfactory compromise the parties may seek to have the Court resolve the matter. Pending the resolution of any visitation questions, visitation shall remain as it has been previously established.

d. Each party recognizes Sharon's need for visitation and in Sharon's best interest they agree that if either of the parties will be out of town or otherwise unavailable for visitation, they will so inform the other party and indicate the estimated length of time they will be unavailable for visitation. Each party will attempt to give the other as much notice as possible of their unavailability for visitation. A message will be left in an envelope in a conspicuous location in Sharon's room.

e. It is the Court's desire and recommendation that both parties continue to work on improving the commu-

nication and relationship between them so that Sharon is not adversely affected. In the Court's opinion psychological counseling is one of the best ways of attempting to alleviate and deal with the conflict between the parties and to teach them to deal effectively and realistically with the situation and Sharon's condition.

f. All personal property of the ward shall remain in its present location until such time as the ward has actual need of the property.

2. That letters of guardianship issue to Donald Kowalski upon filing an oath and a bond in the amount of $10,000.00.

3. The Court directs that Karen Thompson is an additional person to whom notice of proceedings must be given.

4. That the estate of Sharon Kowalski shall pay Elizabeth A. Ristvedt and Kevin Spellacy $400.00 each towards their fees in this matter.

Dated: April 25, 1984.

By the Court:
BRUCE R. DOUGLAS
Judge

STATE OF MINNESOTA
COUNTY OF SHERBURNE

DISTRICT COURT
PROBATE DIVISION
TENTH JUDICIAL DISTRICT

IN RE: GUARDIANSHIP OF
SHARON KOWALSKI, WARD.

File No. 4497

ORDER CONFIRMING APPOINTMENT OF GUARDIAN OF THE PERSON AND ESTATE AND OTHER MATTERS

The above entitled matter came duly on for hearing before the Hon. Bruce R. Douglas, Judge of District Court, on May 3, 1985 in the Sherburne County Courthouse, Elk River, Minnesota, and on May 9, 1985 in the Wright County Courthouse, Buffalo, Minnesota, pursuant to various motions as described below: .

Donald Kowalski, Guardian, appeared personally and by his attorneys, Jack Fena and Kevin A. Spellacy. Thomas D. Hayes appeared as attorney for Sharon Kowalski, ward, who was not present. Karen Thompson appeared personally and by her attorney Elizabeth A. Ristvedt. James W. Ingison, Attorney, appeared on behalf of Park Point Manor Nursing Home.

Park Point Manor Nursing Home moved that the Court grant reimbursement of attorney fees and professional staff fees pursuant to M.S. 525.703.

Donald Kowalski, guardian, moved that the guardian's annual account through March 31, 1985 be approved; that the guardian be reimbursed for expenses and fees in the sum of $12,000.00 for the period from February, 1984, through April, 1985; that Karen Thompson have no further visitation or con-

tact with Sharon Kowalski, ward; that Karen Thompson be restrained from all contact with the medical or nursing home staff or interference with them regarding Sharon Kowalski, ward; and that Karen Thompson be found in contempt for failure to account for personal property of Sharon Kowalski, ward.

Karen Thompson moved that Donald Kowalski be removed as guardian for Sharon Kowalski; that the guardian's request for expenses and fees be denied; that Karen Thompson be awarded attorney fees for harassment and bad faith; and that Karen Thompson be granted continued visitation with Sharon Kowalski and the right to temporary visits with Sharon Kowalski away from the nursing home.

Thomas D. Hayes moved on behalf of the ward that the Court order that the video tapes and photographs of the ward which have been or which will be filed with the Court, not be reproduced, viewed or disseminated beyond the parties to this litigation without Court permission.

Evidence was offered and received.

Based on the papers, pleadings, affidavits on file herein, the evidence received and the arguments of counsel, and being fully advised in the premises, the Court makes the following:

FINDINGS OF FACT

1. The ward was unable to attend the hearing by reason of medical condition as evidenced by written statements from licensed physicians.

2. The ward lacks sufficient understanding or capacity to make or communicate responsible decisions concerning her person.

3. The ward has demonstrated behavioral deficits evidencing inability to meet her needs for medical care, nutrition, clothing, shelter or safety.

4. The ward lacks sufficient understanding or capacity to make or communicate responsible decisions concerning her estate or financial decisions.

5. The ward has demonstrated behavioral deficits evidencing inability to manage her estate.

6. The ward has property which will be dissipated without proper management, and funds are needed for the care, support and welfare of the ward and/or those entitled to the support of the ward.

7. No appropriate alternative to guardianship exists which is less restrictive of civil rights and liberties, including any protective arrangement under M.S. 525.54 Subd. 7.

8. The ward is incapable of exercising the following rights and powers:

a. To establish her place of abode.

b. To determine her food, clothing, shelter, health care, social and recreational requirements, and training, educational and rehabilitation requirements.

c. To dispose of her clothing, personal effects, vehicles, furniture or other property.

d. To consent to necessary medical or other professional care, counseling, treatment or service.

e. To approve or withhold approval of any contract, except for necessities which the ward may make or wish to make.

f. To pay reasonable charges for the support, maintenance and education of the ward.

g. To pay any debts of the ward.

h. To possess and manage her estate, collect all debts and claims in her favor or compromise them, to invest all funds not needed for current debts and

charges, and to represent herself in court proceeding or institute suits.

i. To vote.

9. The ward is not a patient of a State Hospital for the mentally ill or a mentally retarded or dependent ward of the Commissioner of Public Welfare, or under the temporary custody of the Commissioner of Public Welfare.

10. The ward is in need of a guardian to supervise and to protect her person and estate.

11. Donald Kowalski is the most suitable and best qualified among those available and willing to discharge the trust.

12. The ward's ability to respond or communicate had been inconsistent and, at times, unreliable, which situation may or may not improve.

13. The guardian has not filed a complete inventory as required by Minn. Stat. 525.521.

14. Karen Thompson has provided to the guardian a list of personal property in her possession belonging to the ward.

15. The Court has not been provided with information regarding outstanding debts or claims against the ward or her estate.

16. Park Point Manor Nursing Home has not filed a claim with the guardian regarding the attorney fees and professional staff fees it requests.

17. The ongoing conflict between Don and Della Kowalski and Karen Thompson adversely affects the welfare of Sharon Kowalski at the present time; and elimination of that conflict and its adverse affect on the ward is in the best interest of the ward at the present time.

18. None of the parties herein have acted in bad faith so as to justify an award of attorney fees based thereon.

19. All counsel and parties agreed to continue indefinitely Donald Kowalski's request as guardian for reimbursement of expenses and fees.

20. None of the parties nor their counsel objected to the request by Mr. Hayes on behalf of the ward, that access to and use of the video tapes and photographs of the ward be restricted without Court permission.

CONCLUSIONS OF LAW

1. Sharon Kowalski is an incapacitated person.

2. The appointment of a guardian of the person and estate of Sharon Kowalski continues to be necessary.

3. The Court is unable to determine whether to grant the various requests for fees and expenses to be paid from the estate of the ward, based upon the insufficiency of the financial information in the record.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. That the appointment of Donald Kowalski as guardian of the person and estate of Sharon Kowalski be and hereby is confirmed and continued in all respects with all of the powers enumerated in Minn. Stat. 525.56 Subds 3 and 4, without limitation or condition.

2. That the letters of guardianship previously issued Donald Kowalski be and hereby are continued in effect without filing an additional oath.

3. That the bond presently filed by the guardian in the amount of $10,000.00 shall remain in force and effect and shall be maintained.

4. That the conditions and restrictions in the order of this Court dated April 25, 1985, as listed in paragraph 1 (a) through paragraph 1 (f) of said order are hereby rescinded and vacated and shall be of no further effect.

5. That the guardian's duties and powers include the duty to provide for the ward's social and recreational requirements (see Minn. Stat. 525.56, Subd. 3 (2); and that the guardian herein shall have the power to determine who may visit Sharon Kowalski, and the times and duration of such visitation. The guardian shall consider, regarding all visitation decisions, that the primary consideration is the best interest of the ward and any reliably expressed wishes of the ward, both of which may change from time to time. The guardian shall also consider regarding visitation, the recommendations of medical and health care personnel and the needs and desires of the institution wherein the ward resides.

6. That the Court reserves decision on Park Point Manor's motion for reimbursement of attorney fees and professional staff fees without prejudice.

7. That the Court reserves decision on the annual account filed by the guardian, and on the guardian's request for reimbursement of fees and expenses.

8. That Karen Thompson shall no longer have access to medical and financial information and records regarding the ward nor the right to consult with or direct medical and financial personnel regarding the ward.

9. That Donald Kowalski's motion to find Karen Thompson in contempt is hereby denied; provided that Karen Thompson shall forthwith account to the guardian for all property in her possession, which belongs to the ward, and shall follow the guardian's direction regarding delivery, storage or preservation of said property.

10. That Karen Thompson's motions for removal of Donald Kowalski as guardian and for payment of her attorney fees are denied in all respects.

11. That Karen Thompson's motion regarding visitation and contact with Sharon Kowalski is denied except as otherwise ordered and provided for herein in Paragraph (5).

12. That the motion made on behalf of the ward regarding video tapes and photographs of the ward is granted, and it is hereby ordered that the video tapes and photographs of the ward which are on file herein as of the date of this order shall not be copied, reproduced, or duplicated without prior written approval of the Court granted upon notice and motion; and further that said items shall not be viewed or disseminated beyond the parties to this litigation without Court permission.

13. The guardian is ordered to file an inventory as required by Minn. Stat. 525.561 forthwith; and to file a listing of claims made or potential claims against the ward or her estate.

Dated: July 22, 1985.

BRUCE R. DOUGLAS
District Judge

STATE OF MINNESOTA — DISTRICT COURT, PROBATE DIVISION

County of Sherburne — Tenth Judicial District

File No. 4497

IN RE: GUARDIANSHIP OF
SHARON KOWALSKI, WARD

AFFIDAVIT OF
JANLORI GOLDMAN

STATE OF MINNESOTA
COUNTY OF HENNEPIN—ss.

Janlori Goldman, being duly sworn upon oath, deposes and says:

1. I am Legal Counsel and Assistant Director of the Minnesota Civil Liberties Union (the "MCLU") and have personal knowledge of the matters set forth in this Affidavit. I am submitting this Affidavit in support of the Motion of Sharon Kowalski, Ward and her attorneys, Faegre & Benson and the MCLU, for a temporary restraining order restraining Donald Kowalski, Guardian, from prohibiting, inhibiting or otherwise interfering with visitation by Faegre & Benson and the MCLU with their client, Sharon Kowalski.

2. On Thursday, May 30, 1985, I visited Sharon Kowalski at the Park Point Manor Nursing Home in Duluth, Minnesota ("Park Point"). Also present during this visit were Edwin Lee, a legal intern with the MCLU, and Karen Thompson.

3. Ms. Thompson was present during the May 30 visit at my request solely for the purpose of assisting me in communicating with Sharon Kowalski.

4. During the May 30 visit, I communicated with Sharon Kowalski by orally asking her questions. Sharon Kowalski responded to my questions by typing answers on an electric typewriter.

5. During the May 30 visit, I asked Sharon Kowalski, among other questions, in substance the following questions and she typed the following answers:

Question: The MCLU is a private organization. Our purpose is to represent people when their constitutional rights have been violated. I'm the legal counsel of the MCLU and we work with volunteer attorneys who directly handle the cases. Do you understand what I have just explained to you?

Answer: Yes.

Question: Do you want me as a representative of the MCLU to visit you?

Answer: Yes.

Question: Do you understand that if the MCLU represents you, we can only represent you on the constitutional issues involved in your case such as your right to counsel and your right to receive visitors of your choice?

Answer: Yes.

Question: Do you feel that your wishes are being made known to the court?

Answer: No.

Question: Do you want your wishes to be made known to the court?

Answer: Yes.

Question: Will you tell me what your wishes are?

Answer: Yes.

Question: Do you want me to represent you to make your wishes known to the court?

Answer: Yes.

Question: Do you want me to visit you again with a volunteer attorney?

Answer: Yes.

6. On Wednesday, June 12, 1985, I again visited Sharon Kowalski at Park Point. Also present during this visit were Amy B. Bromberg, an attorney with the law firm of Faegre & Benson, Terri A. Brady, an associate with Faegre & Benson, and Ms. Thompson.

7. Ms. Thompson was present during the June 12 visit at my request solely for the purpose of assisting us in communicating with Sharon Kowalski.

8. During the June 12 visit, I communicated with Sharon Kowalski by orally asking her questions and she responded by typing answers on an electric typewriter.

9. During the June 12 visit, I introduced Ms. Bromberg to Sharon Kowalski as a volunteer attorney for the MCLU and

asked Sharon Kowalski if she wanted us to make her wishes known to the court. She responded by typing "Yes".

10. At the end of the June 12 visit, I asked Sharon Kowalski if she wanted us to visit her again and she typed "Yes".

11. Based upon the foregoing, it is my belief that Sharon Kowalski has retained Faegre & Benson and the MCLU to represent her in the above-captioned proceedings.

FURTHER AFFIANT SAYETH NOT.

JANLORI GOLDMAN

Subscribed and sworn to before
me this 5th day of August, 1985.
SUSAN E. SHAW-MEADOW
Notary Public—Minnesota
Hennepin County
My Comm. Exp. Jan. 22, 1991

STATE OF MINNESOTA — DISTRICT COURT
COUNTY OF SHERBURNE — PROBATE DIVISION
TENTH JUDICIAL DISTRICT

IN RE: GUARDIANSHIP OF
SHARON KOWALSKI, WARD

File No. 4497

AFFIDAVIT OF AMY B. BROMBERG

STATE OF MINNESOTA
COUNTY OF HENNEPIN—ss.

Amy B. Bromberg, being first duly sworn upon oath, deposes and says:

1. I am an attorney with the law firm of Faegre & Benson and have personal knowledge of the matters set forth in this

Affidavit. I am submitting this Affidavit in support of the Motion of Sharon Kowalski, Ward, and her attorneys, Faegre & Benson and the Minnesota Civil Liberties Union (the "MCLU"), for a temporary restraining order restraining Donald Kowalski, Guardian, from prohibiting, inhibiting or otherwise interfering with visitation by Faegre & Benson and the MCLU with their client, Sharon Kowalski.

2. No previous application has been made for the order requested by said Motion.

3. On Wednesday, June 12, 1985, I visited Sharon Kowalski at the Park Point Manor Nursing Home in Duluth, Minnesota ("Park Point"). Also present during this visit were Janlori Goldman, Legal Counsel and Assistant Director of the MCLU, Terri A. Brady, an associate with Faegre & Benson, and Karen Thompson.

4. Ms. Thompson was present during the June 12 visit solely for the purpose of assisting us in communicating with Sharon Kowalski.

5. During the June 12 visit, Ms. Goldman introduced me to Sharon Kowalski as a volunteer attorney for the MCLU. I communicated with Sharon Kowalski by orally asking her questions. Sharon Kowalski responded to my questions by typing answers on an electric typewriter.

6. During the June 12 visit, I asked Sharon Kowalski, among other questions, in substance the following questions and she typed the following answers:

Question: Do you understand that there is a court proceeding going on where decisions are being made about who you get to see and where you live?

Answer: Yes.

Question: Do you feel that your wishes are being made known to the court?

Answer: No.

Question: Do you want me to help you let the court know what you want?

Answer: Yes.

7. On Thursday, June 20, 1985, I caused a Notice of Appearance to be served and filed entering the appearance of Faegre & Benson as counsel on behalf of Sharon Kowalski, a true copy of which is attached hereto as Exhibit A.

8. On or about June 28, 1985, I received a copy of a letter dated June 25, 1985, from Jack Fena, Donald Kowalski's attorney, to the Honorable Bruce R. Douglas, which letter stated that Mr. Fena had received a copy of the notice of appearance referred to above and that he welcomed my entry into this case. A true copy of said letter is attached hereto as Exhibit B.

9. On Monday, June 24, 1985, I again visited Sharon Kowalski at Park Point. Also present during this visit was Ms. Brady.

10. When I first arrived at Park Point on June 24th and asked to visit with Sharon Kowalski, Ann Pellman, Head Nurse of the Young Adult Unit, advised me that I could only visit with Sharon Kowalski if Sharon Kowalski wanted to visit with me. I then observed as Ms. Pellman asked Sharon Kowalski to indicate either yes or no regarding whether or not she wished to visit with me by moving different fingers. Sharon Kowalski indicated by moving her finger that she wished to visit with me.

11. During the June 24 visit, I communicated with Sharon Kowalski by orally asking her questions. Sharon Kowalski responded to my questions by typing answers on an electric typewriter.

12. During the June 24 visit, I asked Sharon Kowalski, among other things, in substance the following questions and she typed the following answers:

Question: Do you remember me?

Answer: Yes.

Question: Do you still want me and the MCLU to help you in the court proceedings?

Answer: Yes.

13. Based upon the foregoing, it is my belief that Sharon Kowalski has retained the MCLU and Faegre & Benson to represent her in the above-captioned proceedings.

14. On Friday morning, July 26, 1985, I telephoned Joanne Susens of Park Point, identified myself and inquired as to whether or not I could visit Sharon Kowalski. Ms. Susens advised me that Donald Kowalski had given the nursing home a list of approved visitors and that I was not on the list. She further advised me that in order to visit Sharon Kowalski, I would have to get express permission from Donald Kowalski.

15. On Friday afternoon, July 26, 1985, I had a telephone conversation with Barbara Blumer, attorney for Park Point, during which she advised me that Sharon Kowalski had been discharged from Park Point and moved to another facility. Ms. Blumer further advised me that, pursuant to the instructions of Donald Kowalski, she was not permitted to tell me either the facility or city to which Sharon Kowalski had been moved.

16. I immediately telephoned Thomas D. Hayes, court-appointed attorney for Sharon Kowalski, and advised him of the substance of my telephone conversation with Barbara Blumer. Mr. Hayes responded by advising me that he did not know about Sharon Kowalski's discharge from Park Point and that he would attempt to contact Mr. Fena to determine where Sharon Kowalski had been moved and to discuss visitation with her.

17. Later that same day, Mr. Hayes telephoned me and advised me that he had talked with Mr. Fena and that Mr.

Fena had advised him that Sharon Kowalski had been moved to a nursing home in Hibbing, Minnesota. Mr. Hayes further advised me that Mr. Fena did not respond either affirmatively or negatively as to whether or not Mr. Hayes or I had permission to visit Sharon Kowalski, and that Mr. Fena stated to Mr. Hayes that he did not have a problem with my contacting Donald Kowalski directly for permission to visit Sharon Kowalski.

18. On July 27, 1985, I attempted to contact Donald Kowalski by telephone and left a message at his home with my name and telephone number, stating that the purpose of my call concerned my request for visitation with Sharon Kowalski.

19. On Monday, July 29, 1985, having received no response to the message I left for Donald Kowalski, I telephoned Mr. Fena and indicated that I wished to visit Sharon Kowalski.

20. Mr. Fena responded to my request by inquiring as to whether Faegre & Benson represented any of the insurance companies involved in the personal injury lawsuit Mr. Fena has brought, at the request of Donald Kowalski, on behalf of Sharon Kowalski. Mr. Fena asserted that if Faegre & Benson had ever in the past or presently was representing any of the insurance companies in any capacity, Faegre & Benson had a conflict of interest and could not represent Sharon Kowalski in the guardianship proceedings. Mr. Fena then demanded that I make my request for visitation in writing, stating the purpose of any such visit and whether or not any conflict of interest exists.

21. I immediately investigated the possibility of a conflict of interest on the part of Faegre & Benson and discussed the matter with my partners. We determined that there was no such conflict and I therefore sent Mr. Fena the requested letter, via Federal Express, a true copy of which is attached hereto as Exhibit C.

22. On Wednesday, July 31, 1985, having received no response to my letter request for visitation, I telephoned Mr. Fena and inquired as to whether or not I would be permitted to visit my client, Sharon Kowalski.

23. Mr. Fena responded that Faegre & Benson had a conflict of interest, that I was denied permission to visit Sharon Kowalski until I proved that no such conflict exists, and further, that he did not believe that Faegre & Benson or the MCLU represented Sharon Kowalski. Mr. Fena further advised me that he would be at the Holiday Inn, Nicollet Mall, Minneapolis, Minnesota on August 1, 1985 and thereafter in Alaska until August 19, 1985.

24. I advised Mr. Fena that we could not wait until August 19 to visit our client, Sharon Kowalski, and that if we did not have permission to visit her, we would move the Court for a temporary restraining order as soon as possible.

25. On Thursday, August 1, 1985, I attempted unsuccessfully to reach Mr. Fena by telephone at the Holiday Inn in Minneapolis to advise him of the date of the hearing on the temporary restraining order and left a message requesting that he return my call. Mr. Fena did not return my telephone call.

26. Upon information and belief, Sharon Kowalski is residing at Leisure Hills Nursing Home in Hibbing, Minnesota ("Leisure Hills").

27. Upon information and belief, when any individual telephones Leisure Hills and inquires as to the possibility of visiting Sharon Kowalski, Leisure Hills responds by advising such individuals that they must telephone the Guardian Donald Kowalski for permission to visit Sharon Kowalski and that Donald Kowalski's telephone number can be obtained from the telephone directory.

28. Upon information and belief, Donald Kowalski has disconnected his listed telephone number and now has an unlisted telephone number.

Further affiant sayeth not.

AMY B. BROMBERG

Subscribed and sworn to before me
this 4th day of August, 1985.

LORI J. TIMM
Notary Public

EXHIBIT A

STATE OF MINNESOTA — DISTRICT COURT
COUNTY OF SHERBURNE — PROBATE DIVISION
TENTH JUDICIAL DISTRICT

Court File No. 4497

IN RE: GUARDIANSHIP OF
SHARON KOWALSKI

NOTICE OF APPEARANCE

To: Donald and Della Kowalski and their attorney Jack Fena, 311 East Howard Street, P.O. Box 667, Hibbing, Minnesota, 55746; Karen Thompson and her attorney Elizabeth Ristvedt, 916 St. Germain, P.O. Box 971, St. Cloud, Minnesota, 56302; Thomas Hayes, Smith, Pringle & Hayes, P.O. Box 668, 207 South Walnut Street, Monticello, Minnesota, 55362.

PLEASE TAKE NOTICE that Brian B. O'Neill and Amy B. Bromberg, Faegre & Benson, 2300 Multifoods Tower, 33

South Sixth Street, Minneapolis, Minnesota 55402 hereby enter their appearance as counsel on behalf of Sharon Kowalski.
DATED: June 20, 1985.

AMY B. BROMBERG
Brian B. O'Neill
Attorney Reg. No. 82521
Amy Bromberg
Attorney Reg. No. 145336
Volunteer Attorneys
Minnesota Civil Liberties Union
2300 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402-3694
(612) 371-5300
Attorneys for Sharon Kowalski

AFFIDAVIT OF SERVICE BY MAIL

Re: Guardianship of Sharon Kowalski
File No. 4497

STATE OF MINNESOTA
COUNTY OF HENNEPIN—ss.

Adria D. M. Finnegan of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being duly sworn, says that on the 20th day of June, 1985, she served the annexed:
NOTICE OF APPEARANCE
in the referenced file on the following attorney(s) by mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at Minneapolis, Minnesota directed to said attorney(s) at the following address(es):

Jack Fena, Esq.
311 East Howard Street
P.O. Box 667
Hibbing, MN 55746
Thomas Hayes, Esq.
Smith, Pringle & Hayes
P.O. Box 668
207 So. Walnut St.
Monticello, MN 55362
Elizabeth Ristvedt, Esq.
916 St. Germain
P.O. Box 971
St. Cloud, MN 56302

ADRIA D. M. FINNEGAN

Subscribed and sworn to before
me this 20th day of June, 1985.
JERRI LOU HOLMGREN
Notary Public—Minnesota
Hennepin County
My Commission Expires May 8, 1986

EXHIBIT B

Law Offices of
JACK FENA
311 East Howard St., P.O. Box 667
Hibbing, Minnesota 55746

Telephone—
Office 218 - 263-3623
Home 218 - 254-2505

June 25, 1985

Honorable Bruce Douglas
District Court Judge
Sherburne County Courthouse
Elk River, MN 55330

Re: Sharon Kowalski
Court File No. 4497

Dear Judge Douglas:

I am forwarding to the Court copy of Park Point Manor's letter of June 18, 1985, received by Donald Kowalski. As the Court knows, Mr. Kowalski has been banking the Social Security monies received since their inception. He spent various and sundry amounts and the Court has before it his itemized accounting and I am referring to the television set, etc.

On February 15, 1985, when we appeared at your Court at Elk River at the hearing on that date, the Court indicated to all of the parties that the Court would make an order granting some reimbursement out of the funds that are referred to. The Court has yet to make that award and I am wondering if the Court could please make the award as the Court indicated it would so that Mr. Kowalski can get some reimbursement. As I have stated to the Court, he has spent literally thousands and thousands of dollars of his own money and in fact has practically devastated his life savings in doing the

things he is required to do in looking after his daughter's interests.

Another thing I want to bring up is the matter of home visitation; as you might recall pursuant to our telephone conversation you had indicated that you would issue an order for home visitation with the family, as well as an order for the parents to take Sharon out of the Duluth area to Della Kowalski's brother's home in Two Harbors, which is approximately 25 miles north of Duluth.

The Court can see in the photo album what these visits to her uncle's home and her parents' home have done for her and her spirits.

I am again taking the liberty of enclosing a proposed order that would allow Sharon some visitation at home since she has been in the nursing home since Easter.

I also wish to state to the Court that I received a copy of notice of appearance by Amy Bromberg and Brian B. O'Neill, attorneys representing the Minnesota Civil Liberties Union. I did have a conversation after receiving this notice with Ms. Bromberg and told her I welcomed her entry into this case, even though all of the evidence has been submitted and final arguments made to the Court.

At any rate, it is the hope of these parents that the Court will issue its order relative to visitation. They are, after all, her parents.

I wish to thank you for giving this matter your consideration and I remain,

Respectfully yours,
JACK FENA
Attorney at Law

JF/sb
Enclosure
cc: Elizabeth Ristvedt, Esq.
Thomas Hayes, Esq.
Amy Bromberg, Esq.
Mr. Donald Kowalski

EXHIBIT C

July 29, 1985

FEDERAL EXPRESS

Jack Fena, Esq.
311 East Howard Street
P.O. Box 667
Hibbing, MN 55746

Re: In re: The Guardianship of Sharon Kowalski
File No. 4497

Dear Mr. Fena:

Pursuant to your request during our telephone conversation earlier today, this letter sets forth in writing our request to the Guardian of Sharon Kowalski for permission to visit Sharon. As I have advised you in the past, Sharon has retained the Minnesota Civil Liberties Union to represent her in the above-captioned action. Our firm is acting as volunteer attorneys for the Minnesota Civil Liberties Union in this action and we wish to visit with our client for the purpose of obtaining her instructions. As you requested, I have looked

into the possibility of a conflict of interest regarding State Farm Insurance and Ideal Mutual Insurance and am happy to inform you that no such conflict exists.

I spoke with Tom Hayes earlier today and he also wishes to visit Sharon. He advised me that the purpose of his visit is to measure Sharon's adaptation to her new environment. Mr. Hayes and I will most probably visit Sharon at the same time.

We would like to visit Sharon as soon as possible and would thus appreciate a reply to our request at the Guardian's earliest convenience.

Very truly yours,
AMY B. BROMBERG

ABB/ak
cc: Thomas D. Hayes, Esq. (via Federal Express)
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